

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

Requests for Waiver and/or Review of Decisions)
of the Universal Service Administrator)

by)

CC Docket No. 02-6

Buckeye United School District)
Columbus, OH)

TO: Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Buckeye United School District ("Buckeye United") by and through its E-rate consultant, Educational Funding Group, Inc., CRN 16043587 (LOA is attached), respectfully requests that the Federal Communications Commission ("FCC" or "Commission") Review a decision of the Universal Service Administrative Company ("USAC") that denied funding for two of the Funding Requests ("FRN") contained in FY2013 Form 471 application #886014 and further denied the associated appeal. Buckeye United asks that, in the alternative, the Commission grant it a Waiver relative to the competitive bidding issues USAC found to exist.

This Request for Waiver and/or Review are made pursuant to 54.719 through 54.723 of the Commission's rules.¹

¹47 C.F.R. §§ 54.719–54.723
Buckeye United SD 24 FY2013 Request for Review and/or Waivers

Application Information:

Billed Entity Number: 232559
FCC Form 471 Application Number: 886014
Funding Request Numbers Appealed: 2460905 and 2460926
Date of Funding Commitment Decision Letter: November 7, 2015
Service Providers: AT&T SPIN: 143001192

State of Ohio Dept. of Admin. Services SPIN 143003831

Contact Information:

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USAC'S REASONS FOR DENYING APPEALS

FRNs 2460905 and 2460926 were denied funding for the same reasons; the Funding Commitment Decision Explanation ("FCDL") each stated:

DR1: FCC Rules require applicants to carefully consider all bids submitted by service providers and to choose the most cost-effective solution. Documentation provided demonstrates that the applicant did not consider all of the bids that were submitted. Therefore, the applicant has violated the competitive bidding program rules.

The USAC Administrator denied the appeal stating:

- Based on the documentation you provided during the review of FY2013 FCC Form 471 application # 886014, FRNs 2460905 and 2460926 will be denied because you did not make bidders aware of the minimum requirements needed for their bid to be considered for evaluation. You indicated that Buckeye United School District is required to only purchase off State provided contracts. This requirement was not posted and/or made available to potential bidders on your FCC Form 470 and bidders were not made aware of this requirement. The entity that filed the FCC Form 470 must follow the Schools and Libraries Program competitive bidding rules in addition to all applicable state and local contract and procurement rules and regulations.

I. STATEMENT IN SUPPORT OF REQUEST FOR REVIEW

Buckeye United School District is operated by the State of Ohio Department of Youth Services ("DYS") to provide curriculum education and vocational training to juveniles incarcerated in Ohio's juvenile correctional facilities. The district operates four year-round high schools located around the State and has four non-instructional facilities. DYS/Buckeye United has a strong commitment to improve Ohio's future by habilitating youth and empowering families and communities.

Despite its noble goals and the difficulties it faces as a school that serves indigent, incarcerated students, over the past few years USAC has been subjecting Buckeye United to heightened scrutiny, delaying or denying it much needed E-rate funding.

On Buckeye United's FY2013 FCC Form 471 Application #886014, FRN 2460905 requested funding for Digital Transmission Service and FRN 2460926 requested funding for Internet Access. In January 2015, Buckeye United was subject to a USAC special compliance review which included amongst others, the two FRNs subject of this Request. The compliance review team requested all bidding evaluation matrices, which were provided in Buckeye United's response (submitted on March 6, 2015) together with explanatory statements. The

response submitted by Buckeye United clearly demonstrated that *all* the proposals it received for FRNs 2460905 and 2460926 underwent full evaluations. Nevertheless, when the FCDL issued, funding for both FRNs was denied for failing to consider all bids. It was this denial reason upon which Buckeye United based its appeal to USAC. However, when USAC issued its decision denying the appeal, the explanatory reason failed to address the issue on appeal and instead provided a completely different reason for denial, to wit: *"...you did not make bidders aware of the minimum requirements needed for their bid to be considered for evaluation."* This leaves Buckeye United very unclear as to which standard USAC applied in denying funding for these two FRNs which renders Buckeye United unable to formulate an effective appeal of the issues. The Commission has previously stated that an applicant has the right to understand USAC's reasoning so that it may adequately address the issue(s) on appeal. Since USAC used different reasons for denying the appeal than those used in the Funding Commitment Decision Letter upon which the appeal was based, Buckeye United has no way to adequately defend its application and falls within the purview of the FCC's prior rulings. Following Buckeye United addresses the denial reason USAC gave for the appeal.

Form 470 #458130001085889 was the originating Form 470 for FRNs 2460905 and 2460926. In Block 2, Item 13 of the Form, Buckeye United indicated that it must follow all state purchasing rules to include those posted at three separate hyperlinks that were provided. Buckeye United did this with the intent of being in compliance with FCC requirements to put vendors on notice that there were specific rules governing procurement of the services sought through the Form 470 bid. Given that Buckeye United is a division of a State agency (DYS) the multitude of applicable procurement rules could not fit in the Item 13, so Buckeye United provided the links to the applicable procurement regulations. Providing links to procurement regulations on a Form 470 has always been acceptable to USAC as sufficient to put vendors on

notice that there are procurement regulations of which they must be aware. Nowhere do the E-rate rules require that all procurement rules be clearly delineated in the Block 13, only that vendors be put on notice that that rules exist. For reasons that are unclear to Buckeye United, in the instant situation, USAC found that providing links to the rules was not sufficient. Not only is this discriminatory and prejudicial to Buckeye United, but the first of the links, <http://procure.ohio.gov/proc/sellingtostate.asp>, opens to a page where the applicable purchasing policies are easily ascertainable through a link on the right-hand side of the page. This link goes to Ohio DAS Directive GS-D-12, which at Section II A clearly states that "*Law requires that agencies give first consideration to certain state resources prior to making the purchase from another source. Before making any purchase, agencies must first determine if the supply or service is available from any of the following sources... 6. DAS Office of Procurement Services Sections 125.01 through 125.11, 125.17 of the Revised Code.*" A copy of this Directive is attached as Exhibit A.

II. STATEMENT IN SUPPORT OF REQUEST FOR WAIVER

The Commission has repeatedly reiterated its authority under 47 C.F.R. §1.3 to waive rules for good cause shown and has routinely waived compliance for violations when the record contains no evidence of intent to defraud or abuse the E-rate program and where the public interest is better serviced by granting a waiver:

The Commission may waive any provision of its rules on its own motion and for good cause shown. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such

deviation would better serve the public interest than strict adherence to the general rule. (footnotes omitted)²

Since the Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest and may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis, the Request for Review and/or Waiver filed by Buckeye United should be granted. Buckeye United has abided by all substantive E-rate program rules and conducted a fair and open competitive bidding process. It did its best to comply with all state and E-rate complete bidding regulations to procure the services necessary to the District's operations, including providing links its procurement restrictions on the originating Form 470. Additionally, the district provided timely and complete responses to USAC inquiries, which it appears USAC disregarded, as has become commonplace these days. The issues of non-compliance raised by USAC are not accurate and are unsupported by the Form 470 and associated application documentation upon which USAC based its erroneous conclusion that the competitive bidding process was compromised. Given these facts, Buckeye United believes that it will better serve the public interest, the interest of its incarcerated students and avoid imposing financial hardship on the district if the Commission grant it waivers under the special circumstances described herein.

CONCLUSION

Throughout its application process Buckeye United strove to comply with E-rate program rules and regulations. It followed all core Program rules and committed no fraud, abuse or waste of E-rate funds. Despite the reasons given by the USAC Administrator in denying funding for FRNs 2460905 and 2460926 Buckeye United did put vendors on notice of

² See *Request For Review of Decision of the Universal Service Administrator by Bishop Perry Middle School*, , DA No. 06-54; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).
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its procurement restrictions, as demonstrated by the Block 13 of the originating Form 470. For USAC to unwarrantedly deny funding for the two FRNs using fallacious reasons is against the public interest and the goals of the E-rate program and will create significant financial hardship for the school district.

In view of the foregoing, and for the reasons stated above, Buckeye United Unified School District requests that Commission:

1. Grant its Requests for Review and/or Waiver;
2. Order USAC to reverse its funding denials for the two (2) FRNs contained in this Request;
3. Remand the two FRNs to USAC for re-processing;
4. Direct USAC issue a Revised Funding Commitment Decision Letter awarding funding for the two FRNs;
5. As necessary, waive any procedural rules necessary to effectuate the Commission's resultant Orders.

Respectfully submitted,

/s/ Steve Kaplan

Steve Kaplan
Vice President
Educational Funding Group

EXHIBIT A



**Department of
Youth Services**

John R. Kasich, Governor
Harvey J. Reed, Director

To: Schools and Libraries Division of the
Universal Service Administrative Company


Re: Letter of Agency for the completion of E-rate Funding Year 10 (2007-8) X
and complete Funding Year 2013-14, Year 16 X

The undersigned, on behalf of **Buckeye United School District**, hereby authorizes the personnel and authorized agents of Educational Funding Group, Inc., ("EFG") to act as our Agent(s) with the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) regarding all matters involving our E-rate funding application(s) for the Funding Years checked above.

This authorization relates to the filing of FCC Form 470, FCC Form 471 and all other E-rate forms necessary to complete each year's funding process. This authorization further extends to all other phases of the application process, including, but not limited to, responding to Program Integrity Review inquiries and the filing of appeals. EFG personnel and agents are expressly authorized to access and discuss with the SLD all matters pertaining to our E-rate application(s) and forms for the above-checked Funding Year(s).

This authorization shall remain in full force and effect until all work associated with the Funding Year checked above has been completed.

Buckeye United School District



Signature

Date: 8/1/2012

Burger B. Penrod
Printed Name

Chief Information Officer
Title

Bureau of Management Information Systems
Burger Penrod, Bureau Chief
1320 Arthur E. Adams Drive, Room 413
Columbus, Ohio 43221

614 | 466-9320
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EXHIBIT B



DAS Directive

Directive No. **GS-D-12**
Effective Date: **09-01-2008**



To: All Departments, Offices, Agencies, Boards, Bureaus, Commissions and Institutions

From: Hugh Quill, Director of Administrative Services

Re: Procurement Procedures for Supplies, Services and Information Technology

I. PURPOSE

Each fiscal year state agencies, boards, commissions and institutions purchase over \$2 billion in supplies, services and information technology to run the daily operations of their facilities. The keys to effective procurement of these needs are to standardize and combine needs wherever possible to obtain volume discounts, maintain a staff of well-trained and certified procurement personnel, and to conduct all activities openly and transparently. In accordance with Executive Order 2008-12S, the Department of Administrative Services, Office of Procurement Services will appoint an Ohio Chief Procurement Officer (OCPO) who will be responsible for overseeing all procurement activities of the State. Likewise, each agency is to name a person within the agency as their Agency Procurement Officer (APO) that will report to the OCPO on procurement activities within the respective agency. Among his/her responsibilities, the OCPO will:

- Create a center-led procurement organization across the state
- Maximize the state's purchasing power by leveraging its spending
- Apply concepts of strategic sourcing to obtain volume discounts
- Develop scorecards to measure the successes of the procurement programs
- Coordinate with higher education and local governments to identify opportunities to leverage spending

Among the many responsibilities outlined in the Executive Order, the APOs will:

- Serve as the entity's procurement contact
- Communicate needs for supplies and services to the OCPO
- Ensure that agency staff are properly trained and certified
- Produce and verify data and reports as requested by the OCPO or others

The Department of Administrative Services (DAS), through the Office of Procurement Services (OPS), awards contracts for supplies, services and information technology in excess of \$25,000 for state agencies. State agencies are required to make purchases above \$25,000 through OPS except when the need is available from a required source of supply as described in Section II, A., or except when DAS has delegated authority to the agency to make purchases up to \$50,000. For purchases under \$25,000, for supplies or services that are not available from required state contracts, agencies may use their direct purchase authority to make the purchase. This purpose of this directive is to assist state agencies when exercising their direct purchasing authority.

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II. GENERAL

A. Required State Sources of Supply (Think Ohio First)

Law requires that agencies give first consideration to certain state resources prior to making the purchase from another source. Before making any purchase, agencies must first determine if the supply or service is available from any of the following sources (in order of ranking):

1. Ohio Penal Industries (OPI)
Section 5147.07 of the Revised Code.
2. DAS Office of Procurement from Community Rehabilitation Programs (OPCRP)
Sections 125.60 through 125.6012 of the Revised Code.
3. Rehabilitation Services Commission (RSC), Bureau of Services for Visually Impaired
Sections 3304.28 through 3304.33 of the Revised Code.
4. Department of Mental Health, Office of Support Services
Section 5119.16 of the Revised Code (institutional agencies only).
5. DAS Office of State Printing
Sections 125.31 through 125.76 of the Revised Code.
6. DAS Office of Procurement Services
Sections 125.01 through 125.11, 125.17 of the Revised Code.

Agencies may purchase from these sources without dollar limitation and purchases made from these sources are not counted against an agency's cumulative annual threshold. Waivers may be granted in certain cases. For more information on internal state sources, consult the State of Ohio Procurement Handbook for Supplies and Services.

B. DAS Term Contracts

DAS, through the Office of Procurement Services (OPS) has established requirements term contracts for a variety of supplies, services and information technology needs. These contracts have been established under formal competitive processes set forth in law or by the Controlling Board. The purpose of these contracts is to enable agencies to procure their needs without any further delay resulting from the competitive processes the agency must follow when using direct purchase authority. Agencies may purchase from these contracts without dollar limitation at any time during the effective life of the contract. When making a purchase from a State Term Schedule (STS) contract, agencies are required to obtain a minimum of three quotes from various STS suppliers offering similar or like items. If the value of the purchase exceeds the Maximum Order Limit (MOL) listed in the contract, the agency is required to contact OPS for assistance in negotiating lower pricing from the supplier. Purchases made above the MOL, which have not been reviewed and approved by

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OPS, may be considered to be invalid. Unless otherwise stated in the contract, agencies are required to use STS contracts before using their direct purchase authority. Purchases made from DAS term contracts are not counted against an agency's cumulative annual threshold. Occasionally, if a contract supplier is unable to fulfill the needs of the agency, OPS may grant a special waiver to the agency to purchase the need from another source. The agency must not proceed with the purchase from another source until the waiver has been received. If the agency proceeds with the purchase prior to receiving the waiver and the waiver is denied, the person at the agency who authorized the purchase will be held personally liable for the purchase.

C. Delegated Purchase Authority

Certain types of items require review and pre-approval by DAS prior to making the purchase (e.g., computers, telecommunications equipment, printed goods, copiers and vehicles). When making purchases of this nature, and before issuing a purchase order and/or entering into any agreements with a supplier, contact the appropriate office at the following number:

Information Technology	(614) 644-4499
Telecommunications	(614) 466-6060
Printed Goods	(614) 644-6385
Vehicles	(614) 466-6607
Multi-Functional Print Devices (e.g. copiers, printers)	(614) 644-6365

When the purchase exceeds the direct purchase limit and OPS determines it is not practicable or advantageous to make the purchase, the agency will be granted a Release and Permit to make the purchase using their direct authority up to \$25,000 or delegated authority up to \$50,000. When the direct purchase does not exceed the \$50,000 cumulative annual threshold the agency will not be required to seek approval from the Controlling Board unless the funding source requires such approval (e.g. capital funds). If the purchase causes the agency to exceed the \$50,000 cumulative annual threshold for that supplier, the agency must seek approval from the Controlling Board to proceed with the purchase. Agencies should allow a minimum of ten working days for processing of Pre-Approvals and Release and Permits. When seeking a Release and Permit, agencies should involve OPS in the initial stages of preparing their purchase request to allow OPS sufficient time to determine if the purchase can be made through OPS. Failure to do so could result in OPS denying the request causing a delay in filling the need.

Special Note: All requests seeking approval from the Controlling Board will require a Release and Permit from OPS.

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III. PROCEDURES FOR MAKING DIRECT PURCHASES

A. Direct Purchases of \$500 or less

For purchases with a value of \$500 or less, the agency will obtain a minimum of two verbal quotations. The agency's seeking the quotes shall keep a log journalizing the suppliers contacted, the supplies or services sought, the person contacted and the price given. This log shall also include space to document reasons for not awarding to a lower priced bidder, when applicable. Agencies shall adopt a written policy for purchases under \$500 when it is not cost-effective or practicable to obtain two quotes. This policy should require written approval by a supervisor(s) prior to making the purchase. Agencies should periodically seek and/or review prices from other suppliers to ensure the best price is obtained and maximum competition is generated.

B. Direct Purchases Above \$500

For purchases above \$500, the agency will obtain a minimum of three written and will maintain a record of the suppliers contacted, the quoted price and the supplier selected. Where the supplier selected was not the supplier offering the lowest quote, the agency shall note the reason for its selection of the higher priced supplier. Agencies should periodically seek prices from other suppliers to ensure that the best price is obtained and that maximum competition is generated.

When an agency determines that it is not possible or not advantageous to the State to select a supplier based upon lowest cost, the agency may select a supplier using a Request for Proposal (RFP) or similar process. To properly use the RFP process, consult sections 125.07 and 125.071 of the Revised Code and Administrative Rule 123:5-1-08. For additional information, please refer to the State of Ohio Procurement Handbook for Supplies and Services.

Special Note: An agreement for the sale of supplies or services for an amount of \$500 or more is not enforceable in Ohio or the USA unless the agreement is reduced to writing. The agreement must be written to contain an identification of the supplies or services, the price, the parties to the agreement and the signature of the party against whom enforcement is sought.

C. Minority Business Enterprise (MBE) Set Aside Competition

When using direct purchasing authority, state agencies are required to select a number of purchases, the aggregate value of which equals approximately 15% percent of their total purchases of supplies and services for the fiscal year, for competition by MBEs only. When exercising direct purchasing authority, remember to definitively mark all purchasing documents to show only MBE vendors were contacted for price quotes. Also, monitor set asides quarterly and adjust your projections and selections as necessary. Agency purchases from DAS term contracts that have been set aside may be considered in their 15% percent goal.

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It is important to evaluate the impact of your set aside selections. For each contract to be set aside, consider the following:

1. All product/service categories may not have certified MBEs available to compete for the need. Check the listing of certified MBEs maintained by the DAS Equal Opportunity Division (EOD) prior to selecting the item for set aside.
2. Do not repeatedly select an entire product category for set aside (e.g., all of the contracts for the purchase of shoes, etc.). Consider various categories of products/services and then alternate setting them aside.
3. Do consider contract incumbency or longevity (e.g., who has held the contract for the last 10 years) and its impact on both minority and majority firms.
4. Consider dividing contracts or purchases into smaller contracts or multiple contracts in order to allow small businesses to compete.

D. EDGE Purchases

Agencies are required to participate in a contract assistance program called the Encouraging Diversity, Growth, and Equity Program (EDGE). EDGE establishes procurement goals by comparing contractor availability to contractor utilization and eligible expenditures. The initial goal is to award 5% percent of all contracts for supplies, services, information technology, and construction to EDGE participants.

EDGE further requires every cabinet-level state agency, within the constraints of statutory authority and as otherwise provided by law, to:

1. Take appropriate steps to foster, support and encourage the participation of underutilized businesses and encourage such businesses to compete for construction contracts and the procurement of goods and services by including a participation goal for construction contracts and requests for proposals when subcontractors or sub-consultants are used.
2. Review its projected annual procurements to determine, based on EDGE program participant availability, which procurements will be designated as eligible for EDGE. Once participation goals are established, monitor and report program compliance to DAS.
3. Examine its internal agency procurement policies, procedures and practices and remove those elements that adversely impact small and minority-owned or women-owned businesses.
4. Examine and eliminate all unnecessary barriers to equitable participation, including, but not limited to, the following items: bonding and licensing requirements, excessive

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experience requirements, massive procurements (unbundling contracts when practicable), use of proprietary specifications and other procurement-related requirements.

5. Set a goal that approximately 5% percent of eligible direct expenditures in the areas of construction, architecture/engineering, professional services, goods and services, and information technology services is awarded to EDGE program participants.
6. Provide the DAS Equal Opportunity Division with quarterly reports and annual projections on EDGE utilization.

For more information, visit the EDGE web site at <http://www.edge.oh.gov/>.

E. Payment Card Purchases

Agencies should refer to the State of Ohio Financials Process Manual when making purchases using their payment card. This manual may be located at www.obm.ohio.gov. The payment card may also be used to make purchases from selected DAS term contracts and state term schedules up to \$2,500. Agencies should authorize payment for supplies and services only when delivered and received by the agency. Agencies should not authorize full payment for partial shipments until all supplies or services have been received.

F. Emergency Purchases

Law defines an emergency situation as one which creates a threat to public health, welfare, safety or other such reasons as proclaimed by the Governor. Examples of these types of emergencies in Ohio could include, but are not limited to: floods, ice/snow storms, tornado damage, radiation leaks, pandemics or acts of terrorism. When these events occur in Ohio and damage is far-reaching and severe, they are usually followed by an emergency declaration by the Governor and/or President of the United States. Special provisions are set forth in section 125.023 of the Revised Code to permit agencies to make emergency purchases to resolve situations that have impacted the agency. The Ohio Emergency Management Agency (OEMA) is responsible for coordinating emergency response activities during a declared emergency. The agency should follow the processes for seeking quotations as set forth in this Directive to make necessary purchases. When a formal declaration is issued, the repairs may be eligible for reimbursement by the Federal Emergency Management Agency (FEMA). FEMA does require that purchases be competed and that accurate and detailed records be maintained to qualify for reimbursement. More information about FEMA reimbursement is available from Ohio Emergency Management website at: <http://www.ema.ohio.gov/grantsdiv.asp>.

A second type of emergency may be due to a situation that has developed at the agency and that can cause disruption of their daily activities. For example; breakdown of a boiler, HVAC system or security system, localized fire or weather damage, etc. The agency should follow the processes for seeking quotations as set forth in this Directive to make the

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purchase. When the amount of the emergency purchase exceeds direct purchase limitations, the agency must obtain a release and permit from the Office of Procurement Services (OPS). When the amount of the purchase exceeds the cumulative purchase threshold, the agency must obtain approval from the Controlling Board. Release and Permits and/or approvals from the Controlling Board must be obtained prior to making the purchase. However, when the emergency need occurs during nonbusiness hours and the agency has exhausted all efforts to contact the Controlling Board or OPS, the agency may proceed with the purchase and then forward documentation to OPS and the Controlling Board on the next regular day of business.

G. In State and Domestic Preferences

Agencies must give preference to supplies and services produced or manufactured in the United States and/or in Ohio. When obtaining quotations, the agency should request information as to the point of manufacture and location of the supplier. Application of the preferences should be in accordance with current Office of Procurement Services policy (PUR-003) as published in the State of Ohio Procurement Handbook for Supplies and Services.

IV. MISCELLANEOUS

A. Disclosure of Location of Services and Data

On contracts for services, state agencies must require contractors to disclose:

1. The location(s) where all services will be performed; and
2. The location(s) where any state data applicable to the contract will be maintained or made available; and
3. The principal location of business for the contractor and all subcontractors.

During the performance of the contract, the contractor must not change the location(s) of the country where services are performed or change the location(s) of the country where the data are maintained or made available without prior written approval of the state agency.

Disclosure is not required for site-specific service contracts in which there are no state data (i.e., laundry service, pest control, and food service).

B. Unresolved Findings for Recovery Verification

State agencies are prohibited from awarding a contract to any company against whom the Auditor of State has issued a finding for recovery if the finding for recovery is "unresolved" at the time of the award. This prohibition applies to competitively awarded contracts

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exceeding \$25,000, and to those contracts for which the selected company received at least \$50,000 in compensation the previous fiscal year.

Agencies may check the potential awardee's name by visiting the Auditor's web site at www.auditor.state.oh.us. Agencies are also required to check the Auditor's database when renewing contracts under direct authority.

Once the database is checked and a contract is successfully awarded, the agency does not have to check the database before processing transactions against the contract. This includes transactions made by purchase order, credit card, and debit card, or any purchases from DAS term contracts.

This prohibition does not apply to:

- employment contracts;
- bonding companies;
- Medicaid provider agreements;
- Contracts where federal law dictates that a person is eligible for the contract.

Other exceptions may apply. For more information regarding the findings for recovery database, visit the Auditor's web site or call 1-800-282-0370. For legal questions, consult Attorney General Opinion 2004-014, available on the web at: <http://www.ag.state.oh.us/sections/opinions/2004/2004-014.pdf>.

C. Suspensions and Debarments

State agencies are prohibited from awarding a contract for supplies or services, funded in whole or in part with federal and/or state funds, to a person who appears on any debarment list. Agencies may view the Federal List of Excluded Parties Listing System, located at <http://epls.arnet.gov/>, the Ohio Department of Transportation debarred list at <http://www.dot.state.oh.us/CONTRACT/Notice/Debarment.pdf> or DAS debarment list located on the DAS website at www.ohio.gov/procure. State agencies are required to check these systems before awarding a contract involving state and/or federal funds.

D. Declaration of Material Assistance (DMA)

All suppliers doing business with the state of Ohio are required to complete the Declaration of Material Assistance form before they may be awarded a contract with a value greater than \$100,000. Agencies should either obtain this certification from the supplier directly or may review the central log maintained by OBM. This log may be viewed at www.obm.ohio.gov. Click on DMA Pre-Certification verification.

E. Quotes should be F.O.B. Destination, Freight Prepaid. F.O.B. Destination places the cost and risk of loss during transportation on the supplier. Freight prepaid requires the supplier to include freight in the cost of the product.

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- F. Purchases of like items are not to be split to avoid competitive selection the Office of Procurement Services or waiver of competitive selection by the Controlling Board.
- G. The definition of "Purchase" includes rental, lease and lease purchase agreements. Agencies should be very cautious when asked to sign procurement related documents by a supplier, as these documents may contain terms and conditions that are not in the best interest of the state of Ohio. At no time shall an agency sign additional procurement documents on a purchase made from a DAS contract unless DAS expressly approves the additional documents, in writing.
- H. Agencies shall follow processes set forth by OBM and DAS when entering purchase requisitions, orders, invoices and related documents into the state's central procurement and accounting system.
- I. All suppliers are required to complete an affirmative action plan prior to being award a contract. There are no exceptions to this requirement. Suppliers should be directed to the EOD website at: <http://www.das.ohio.gov/Eod/AEEEO.htm>

J. Ohio Ethics.

Any employee of the agency involved with making a procurement and any supplier actively doing business with or seeking to do business with the agency are responsible for reviewing and complying with all relevant provisions of Ohio Revised Code Sections 102.01 to 102.09 and with Governor Strickland's Executive Order 2007-01S for Ethics. When using direct purchase authority, it is the responsibility of the agency to make the supplier aware of these laws and Executive Order. It is recommended that agencies consider the following certification for all purchases:

"In accordance with Executive Order 2007-01S, supplier, by acceptance of the purchase order, certifies (1) it has reviewed and understands Executive Order 2007-01S and (2) has reviewed and understands Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. The supplier understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of the contract and may result in the loss of other contracts with the state of Ohio up to and including debarment.

Supplier certifies that it is currently in compliance and will continue to adhere to the requirements of Ohio ethics laws."

Executive Order 2007-01S is available at www.governor.ohio.gov. Click on Governor's Office and then on Executive Orders.

When an agency is purchasing supplies and services that amount to \$500 or more, the agency must require the vendor to certify that it is in compliance with the requirements of Ohio ethics and campaign contribution laws. The agency should refer to the Office of

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Effective Date: **09-01-2008**



Budget & Management procedures which are located at: www.obm.ohio.gov. Click on manuals, policies, publications & rules.

This directive supersedes any previously issued directive or policy and will remain effective until canceled or superseded.

AUTHORITY & REFERENCE

ORC 9.312
ORC 123.011
ORC 125.01 to 125.11, 125.17, 125.60 to 125.6012
OAC 123:5-1-01 to 123:5-1-12
ORC 125.111
ORC 127.16
ORC 102.04
ORC 102.01 – 102.09
ORC 9.24
Executive Order 2008-12S